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IN THE

Supreme Court of the United States

October Term, 1970
No. 849

ROBERT C. FIELDING, SALLY NEUMEYER, as Executrix of the Estate of ALBERT G. NEUMEYER, Deceased, ALFONS LANDA, CLIFFORD JONES, *et al.*,

Petitioners,

vs.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a corporation, GEORGE D. WEBSTER, JOHN HENRY BREBBIA, and HONORABLE BRUCE R. THOMPSON, United States District Judge,

Respondents.

Brief of Petitioners in Reply to Respondent Federal Savings and Loan Insurance Corporation's Opposition to Petition for Writ of Certiorari.

Preliminary Statement.

1. Respondent Federal Savings and Loan Insurance Corporation[1] has attempted in its brief in opposition to the petition[2] to obscure the fact that three separate and substantial questions of conflicts of interest and breaches of lawyer-client privileges have been presented below and that cases decided by the Ninth Circuit require that each of these questions be determined after

[1]Respondent Federal Savings and Loan Insurance Corporation will be referred to for convenience as "FSLIC".

[2]FSLIC's brief in opposition will be cited as "Br.".

a full hearing of the facts promptly upon their presentation to the district court for decision by motion for injunctive relief. *Cord v. Smith*, 338 F. 2d 516, 522 (9 Cir. 1964); *Chugach Electric Association v. United States District Court*, 370 F. 2d 441, 442 (9 Cir. 1966). See also *Kurbitz v. Kurbitz*, Wash., 468 P. 2d 673, 676 (1970). Those three separate questions are:

(1.1) The continued indirect participation of respondents Webster and Brebbia in the main action below, with FSLIC's utilization of their tainted evidence and tainted leads to evidence *cf. Cord v. Smith*, 370 F. 2d 418, 424 (9 Cir. 1966);

(1.2) The continued participation of the Munger law firm in the main action below, where a partner in that firm—Norbert Schlei—had counseled petitioner's decedent, Albert Neumeyer, on this very litigation and advised Neumeyer that he had no liability therefor; and

(1.3) The continued participation of the Munger law firm in the main action below, where a second partner in that firm—Alan Moscov—commenced this action, which may principally benefit a private corporation (FSLIC's assignor, First Western Savings and Loan Association in his former capacity as general counsel of the Federal Home Loan Bank Board; and now, as a partner in the Munger law firm, is involved in prosecuting that assigned claim for the benefit of a party other than the United States. 18 U.S.C. §207(a).

Petitioners have been denied an evidentiary hearing in the District Court on the first issue (Webster-Brebbia); and petitioners have been denied the required review of the denial of their motion for disqualification of opposing counsel (the Schlei conflict and the Mos-

cov conflict) in the timely mandamus proceeding which they initiated in the Court of Appeals. *Cord v. Smith, supra; Chugach Electric Association v. United States District Court, supra.*

2. FSLIC urges that the mandamus proceeding was premature insofar as it sought to review the denial of a hearing in the District Court on the Webster-Brebbia matter. [Br. 11-12]. FSLIC interprets the denial of a hearing simply as an exercise of the District Court's inherent power to control its own calendar in a case before it reaches final judgment. The cases cited by FSLIC for that proposition have no relevance to a motion for disqualification of opposing counsel on a claim of conflict of interest. Moreover, FSLIC's claim that the mandamus proceeding was premature is refuted by the stated purpose of the district judge when he denied petitioners' motion for relief from the consequences of the Webster-Brebbia conflict of interest and breach of lawyer-client privilege at the same time that he denied petitioners' concurrent request for an evidentiary hearing on that issue [Appendix A].[3]

3. For the first time, FSLIC has urged for the benefit of respondents Webster and Brebbia a spurious question of the lack of personal jurisdiction over Webster and Brebbia [Br. 3]. FSLIC contends that neither this Court nor either of the lower courts has the power to make any orders against Webster and Brebbia. Petitioners submit that this contention is neither true nor

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[3]Annexed as Appendix A is a portion of the reporter's transcript of proceedings in the District Court before the Honorable Bruce R. Thompson, United States District Judge, during the hearing of petitioners' motion for a protective order to stay pre-trial discovery until petitioners' motion for injunctive relief on the Webster-Brebbia matter could be heard. The proceedings reported in Appendix A occurred in Reno, Nevada, on 21 May 1970.

relevant to the questions presented in the petition. *E. F. Hutton & Company v. Brown*, 305 F. Supp. 371, 378-383 (S.D. Texas 1969). In order to satisfy due process requirements, in the event that the lower courts decided to make an order directly against Webster and Brebbia, they have been afforded actual notice of the motion for injunctive relief in the District Court and of the mandamus proceeding and the petition for a writ of certiorari. *Cf. E. F. Hutton & Company v. Brown, supra*, at 383. However, sufficient equitable relief addressed exclusively to respondent FSLIC and its counsel of record, the Munger law firm, is available to the lower courts in order to protect petitioners from the conflicts of interest and tainted evidence which have infected the main action below. Indeed, if the main action has been so irretrievably tainted that FSLIC can no longer be permitted to prosecute the case, having no substantial evidence that does not emanate from the privileged files and knowledge of petitioners' former lawyers, then the remedy of dismissal of the main action is available without regard to the presence of Webster and Brebbia as parties defendant. There is a clear analogy in a case where a defendant in a criminal action moves to suppress evidence tainted by unlawful, electronic surveillance by the Federal Bureau of Investigation. The district court may dismiss the prosecution if the tainted evidence so materially infects the case that an untainted presentation of evidence is inconceivable to the trial court. The FBI agent who caused the taint to the Government's case, of course, need not be joined as a party to the proceeding.[4]

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[4]In an unreported decision in the United States District Court for the Central District of California, the Honorable Warren J.

The Court of Appeals Should Have Reviewed the Action of the District Court in Refusing to Hear the Webster and Brebbia Question and in Refusing to Disqualify the Munger Law Firm.

Without hearing or opinion, the Court of Appeals summarily affirmed the action of the District Court in refusing all of the eleven items of injunctive relief sought by petitioners to cure the effects in the main action of the multiple conflicts of interest which burden the prosecution of FSLIC's case. FSLIC urges this Court to deny the petition for writ of certiorari on the ground that the Webster-Brebbia matter is not ripe for appellate review and on the ground that the Schlei and Moscov conflicts of interest issues were properly resolved by the District Court and therefore were not entitled to any hearing in the Court of Appeals in the abortive mandamus proceeding. The petition for writ of mandamus was summarily dismissed without requiring an answer or responsive brief from FSLIC.

One thing is clear. The District Court did not share FSLIC's belief that the petition for writ of mandamus was premature insofar as it sought appellate review in one proceeding of the denial of disqualification of the Munger law firm and of the denial of disqualification and other injunctive relief sought with respect to the Webster-Brebbia wrongdoing.

Ferguson, United States District Judge, granted the defendants' motion to suppress evidence which was the product of the FBI's unlawful electronic surveillance which was revealed to this Court in *Alderman v. United States*, 394 U.S. 165, 168, 89 S.Ct. 961, 963 (1969). The District Court then went on to dismiss the indictment. *United States of America v. Joseph Y. Stein* and *Leonard B. Stallman*, C.D. Cal. No. 2523. See a copy of the judgment entered 21 May 1969 in the *Stein and Stallman* case in Appendix B.

In denying all injunctive relief without a hearing on the Webster-Brebbia issues on 21 May 1970, Judge Thompson said:

> "On that same date the Court will entertain the twenty defendants' anticipated motion for a stay pending application to the Court of Appeals for the Ninth Circuit.
>
> "I think there is some virtue involved in going to the Ninth Circuit as little as possible, so I am going to set this up so you can go on both motions at the same time. So the motion of twenty defendants for the protective order, which seeks a stay of all discovery proceedings until termination [sic] of the motion for injunctions, is denied.
>
> "I will also prepare an order denying the motion for the injunctive relief sought with respect to the participation of Webster and Brebbia in the case, which will also deny any need at the present time for an evidentiary hearing in support of that motion; and will then indicate the possibility that the Court, after discovery is completed or near completion, will entertain a motion that the action be dismissed if the defendant is advised that that would be a proper motion at that time." [Reporter's Transcript of Proceedings, 21 May 1970, p. 47, lines 4-21, appearing in Appendix A].

It is clear that Judge Thompson expected a review of his denial of the Webster-Brebbia disqualification injunctions in the same mandamus proceeding which petitioners had announced they were about to file in the Court of Appeals in order to review his denial of the motion to disqualify the Munger law firm. How-

ever, the Court of Appeals failed to entertain the mandamus petition and to allow a full-blown review of the questions of law presented, both on the merits and on the question of denial of a hearing in the District Court on the Webster-Brebbia taint to FSLIC's case.

FSLIC seeks to justify the failure of the Court of Appeals to hear these issues by the argument that the District Court merely exercised its prerogative to control its calendar and indefinitely to defer consideration of pressing conflicts of interest questions. The cases cited by FSLIC for this proposition are clearly distinguishable [Br. 11-12] from the issues presented in this case. None of them concerned the question of whether consideration of motions to disqualify opposing counsel on grounds of conflicts of interest could be deferred *sine die* while pre-trial discovery proceeded and the evil sought to be prevented by disqualification was aggravated to the point that substantive relief would be too little and too late.

Conclusion.

The Ninth Circuit's own decisional law required it to consider the urgent conflicts of interest questions presented by the motions for disqualification of Webster and Brebbia and the Munger law firm and for incidental injunctive relief. *Cord v. Smith*, 338 F. 2d 516, 522 (9 Cir. 1964). Such review was contemplated by the District Court and used as a purported justification for denial of relief on the Webster-Brebbia injunctions without permitting petitioners to offer any live testimony or to have the benefit of a hearing of any sort on their motion for disqualification of Webster and Brebbia.

The failure and refusal of the Court of Appeals to review the disqualification of counsel issues by mandamus and to order appropriate relief in the District Court, including, without limitation, the failure of the Court of Appeals to order the District Court to hold a trial-type hearing on the Webster-Brebbia issues, was error which casts in doubt the existing law in the Ninth Circuit on disqualification of counsel for conflicts of interest and raises a substantial conflict with the law of other Circuits on the use of unlawfully obtained evidence in civil proceedings brought by a Government agency.

The writ of certiorari should issue.

Dated: 22 December 1970.

Respectfully submitted,

THOMAS R. SHERIDAN,
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THORNTON & MEDVENE,
Attorneys for Petitioners.

APPENDIX A.

Excerpts From Reporter's Transcript of Proceedings.

United States District Court for the District of Nevada. Federal Savings and Loan Insurance Corporation, a corporation, Plaintiff, v. Robert C. Fielding, et al., Defendants. Civil No. LV-1222.

Hearing of Twenty Defendants' Motion For a Protective Order in Reno, Nevada, on 21 May 1970.

Page 6, line 19:

MR. SHERIDAN: Now there are two motions left on this morning's calendar, your Honor. One is the motion of twenty defendants for a protective order to hold off any discovery until we have a hearing on the remaining six preliminary injunction restraining orders that relate to the activities of Mr. Webster and Mr. Brebbia. I would like that protective order, and Mr. Taft is opposed to it. Maybe there is a partly practical answer involved here, because to some extent in our reply memo in Mr. Taft's opposition we are already litigating the Webster-Brebbia problem. If the Court could advise us now of a hearing date when we could have a hearing on those remaining six preliminary injunctions and restraining orders, it might make it easier to decide this question of whether or not we should have a protective order.

Mr. Taft has noticed three depositions. That is calling up immediately.

THE COURT: What did you try to enjoin? I can't recall your specific prayer.

MR. SHERIDAN: There are six. I want to enjoin the plaintiff from proceeding from any information, et cetera, from Mr. Webster and Brebbia— Let me get my file.

It is to restrain Mr. Webster—No. 6 was to restrain and enjoin Mr. Webster from doing anything that will injuriously affect the interest of these defendants.

No. 7 was restraining the plaintiff, FSLIC, from using any information in this action against these defendants, which information plaintiff obtained and acquired through Webster and which information Webster acquired as a result of his former relationship as attorney for the defendants and for First Western Financial and attorney for First Western Savings.

The eighth one is an order restraining and enjoining Webster from divulging any confidential and privileged information to the plaintiff, which information was acquired by him while he was attorney for the defendants and First Western Financial and First Western Savings.

The last three are a repeat, only using the name Brebbia instead of the name Webster.

THE COURT: In one of your more recent memoranda, you suggested, if I read it correctly, that perhaps what you are really talking about is that this lawsuit carries some sort of a fatal fate because of Brebbia and Webster's participation on both sides of the fence; and that the proper action would be dismissal.

MR. SHERIDAN: That is correct, your Honor. I am developing more in that direction. I am trying to get more and more evidence on it. At the time the Court sets for a hearing, it is my intention to subpoena Mr. Webster and Mr. Brebbia as witnesses. I have, of course, had some dialogue with Mr. Taft—our communications aren't the Court's problems at this time—trying to find out what he can tell me on the facts relevant to Mr. Webster and Mr. Brebbia. I can find little case law in that direction, but there is little case law in this whole problem, as complicated as I frankly think this is. And I see the analogy, and that is what I am moving toward; that it is the same as illegally obtained evidence that so taints the case that you not only grant

the motion to suppress, but dismiss the case at the same time. At least we did that in Los Angeles after a five-week hearing. That is what the Judge ruled. Instead of granting the motion to suppress, the Judge dismissed the action, and dismissed it so that the Government could appeal if they wanted to. The Government chose not to appeal, but the Judge made findings that the case was so tainted that he does not see how the Government could ever get untainted evidence—

THE COURT: From reading Mr. Rogers' affidavit and from reading your memorandum, it seems to me that that is the situation here. There is no way that anybody could segregate Brebbia and Webster's confidential information from non-confidential information.

MR. SHERIDAN: I don't want to prejudice Mr. Taft—

THE COURT: I have read what Mr. Taft has to say, and I think that there is some considerable merit to his point of view; that perhaps none of these communications was confidential. But I think the whole problem is a serious one and affects the whole legal profession in the manner in which lawyers may see fit to operate in the future, depending on how problems of this kind are decided. In the past twenty years it has become very common for lawyers to get into business with their clients, which was less common in the early years of our country. The concept of law as a profession seems to be becoming degraded to some degree. I don't know what the outcome is going to be, but it seems to me that this is not a problem that is going to be solved by foreclosing discovery. If there is going to be any solution to it, it is going to be after as complete discovery as we can manage in the case, and then a determination on the

merits of the effect of this dual relationship or representation upon the rights of the plaintiff.

MR. SHERIDAN: Where I have trouble with that part, your Honor, is I understand, for instance, that Mr. Webster and Mr. Brebbia—I know Mr. Rogers' affidavit covers it and Mr. Webster's deposition agreed to it—that Mr. Webster took files and records from his former law firm. He has had a written contract, which we made an exhibit, that the records would remain with the Davies law firm.

One night, the same night that he left that firm and joined another firm, he and Mr. Brebbia went in, in violation of the written agreement with his law partners, and took files and records. At this stage we don't even know what files and records he took. So far Mr. Taft's position has been that insofar as he took files and records that belonged to the corporation, he can do so. Whether or not he is civilly liable for breach of contract with his former law partners is not Mr. Taft's concern; just whether or not those documents are proper. I don't know what documents plaintiff has. If he took documents that he has no right to take—let's assume he is taking documents that are not corporate records in a law firm where they represented $200 million corporations over a period of five years—I am sure that there are memorandums, there are notes, things of this nature that are not the client's; they belong to the law firm, not the client. Interoffice communications. I am satisfied that Mr. Taft has some of those in his possession. The reason I am satisfied is because of the appendix to Mr. Taft's motion that is pending now that we will file an opposition to, his motion under Rule 34 for production of documents. He describes documents. Some of the documents he is describing, we don't even have the documents. Our

position on those is that those are documents that Mr. Webster and Mr. Brebbia stole from that law firm, and they are not documents that belong to First Western Financial. Some of them are personal records of the senior partner in that law firm, Mr. Landa, who is one of the defendants here. Those documents and records it now appears are in the possession of Mr. Taft. Mr. Webster, in his deposition, stated, yes, he took those records from the Davies law firm at night. When he was asked in his deposition, "Where are those records now," he said, "They are either in my new office in Washington, D. C.—" the offices of the Gaines law firm—or "they are being used as part of this litigation," at that time the State case.

As we proceed into discovery, particularly any of my clients who are attorneys, Mr. Holloman, one of the named defendants; Mr. Landa, one of the named defendants, they don't know how to answer any question. They have got attorney-client relationships not only with First Western Financial, not only with First Western Savings, but with Nevada Bank of Commerce, American Savings and Loan, personally with the other defendants who aren't waiving any attorney-client relationship, any confidential communication. How can they answer any kind of questions at this stage? They are going to have to assert the attorney-client. It is incumbent upon them to do so, they have no choice in it. The way I see it now—

THE COURT: I don't understand that their depositions have been noticed.

MR. SHERIDAN: At one stage Mr. Landa's deposition was noticed, and Mr. Landa had an operation, he had an eye removed. When I informed Mr. Taft, Mr. Taft, out of courtesy, removed Mr. Landa down the list somewhere.

THE COURT: You say Mr. Landa has got to assert an attorney-client privilege?

MR. SHERIDAN: Yes, your Honor, on behalf of the Davies law firm, which he is the senior partner in. His law firm, for instance, represents the defendant, Mr. Fielding, in his personal capacity since long before there was any First Western Financial. They represent Nevada Bank of Commerce. Mr. Holloman resigned as general counsel for First Western Financial and became general counsel for Nevada Bank of Commerce. And Nevada Bank of Commerce is a defendant in this action. And I doubt—well, until or unless Nevada Bank of Commerce releases Mr. Holloman or any member of the Davies law firm, then he can't talk about that subject matter at all. That privilege, of course, belongs to the client.

THE COURT: He doesn't have a privilege to preclude a witness from talking about a subject matter. He has a privilege to preclude him from disclosing confidential information, period.

MR. SHERIDAN: I agree. I don't want to litigate that area at this time. I don't know what they are interested in. But the whole acquisition—

THE COURT: How does that relate to this particular motion? This particular motion you are talking about Webster and Brebbia.

MR. SHERIDAN: That is correct, your Honor. And Webster was a partner in the Davies law firm prior to Mr. Fielding and Mr. Landa acquiring any interest in First Western Financial. Mr. Webster personally handled it, he was a partner in the firm and he was a partner until 1967 in this whole litigation. Any confidential communications that the Davies law firm has, Mr. Webster has and he is bound by them. And as we

dig into this more and more—for instance, the schedule I have seen—maybe what I have to end up doing is making a motion to suppress, even though it is a civil case. I know that is a proper motion to be made now in a civil case, at least the Ninth Circuit has indicated that in Stone something. It was a civil case with a motion to suppress, which he lost, actually. Maybe that is what we will have to end up here when we find out the scope of these records. That is why I am ready to go forward, your Honor, in a hearing on Webster and Brebbia and these preliminary injunctions, giving Mr. Taft time, of course, to file his points and authorities on that motion; and whenever he says he is ready to file it—and we discussed it amongst ourselves, you know, this week, next week or the week after, whenever it fits his schedule—shortly thereafter, if the Court gives us a date we can have a hearing on the six preliminary injunctions.

THE COURT: I thought he filed his points and authorities? You filed some points and authorities that deal with the subject.

MR. TAFT: Yes, your honor. It was in opposition to the protective order.

THE COURT: Oh, all right.

MR. SHERIDAN: That is why I think he has got his basic research done, so he can file his memorandum of points and authorities when his calendar permits it. I would think maybe the second week in June if this Court's calendar is clean—not clean, but clear at that time. I think it would take two days on the hearing.

I have done this, notice to the Court and served Mr. Taft with a copy; I have served by mail Mr. Webster and Mr. Brebbia with the motions for the injunc-

tions and restraining orders and sent it to their offices and so on. I have served them with points and authorities, since one of the cases indicate that it would be necessary in order for this Court to get total jurisdiction to put them on notice. I know that they have got the papers in this. I don't know what their position will be if they are subpoenaed, whether they will attend or not attend. But if you can give us a date now for somwhere around that second week in June for the hearing, I will put subpoenas out on them before I leave up here today. I don't know the law, frankly, as to the extraterritorial effect, but since this Court has already ruled that the 10(b)(5) action in the complaint, you are not going to dismiss it, at least you haven't dismissed it yet, and under the SEC, there is nationwide service of process, I am hopeful that the subpoena has effect outside of just the District of Nevada. I will also communicate in writing to Mr. Webster and Brebbia. No attorneys like to be in the position, I am sure, that we are in on this—

THE COURT: What are Webster and Brebbia's positions with respect to First Western Savings and Loan now?

MR. SHERIDAN: What is their composition? They are Chairman of the Board of the parent, Mr. Webster. He is Chairman of the Board of First Western Financial Corporation and First Western, a wholly-owned subsidiary. Mr. Brebbia is President of First Western Financial. That is when you get into the area of waiving of privilege, who is going to end up waiving privilege for First Western Financial, the very guys who have got the privlege?

THE COURT: Who are the officers of the Savings and Loan?

MR. SHERIDAN: Mr. Haley is the current President, and I believe also Mr. Brebbia and Webster are on the Board of the Savings and Loan. I think they are, but I am not positive. I know that they are both on the Board of Directors of the parent corporation, and since it is a wholly-owned subsidiary, they obviously, in their position of board members and President and Chairman of the Board, controlled the Savings and Loan Association.

THE COURT: It occurs to me that you may be talking about problems that don't exist. I would be astounded if it should turn out that Mr. Webster and Mr. Brebbia are not going to cooperate with the plaintiff in this lawsuit.

MR. SHERIDAN: I am waiting for Mr. Taft's points and authorities to see what position he is going to take; whether he is going to bring them under his government agency umbrella or leave them out in the rain. I don't know yet. I don't have bated breath, but I am still waiting to see how he is going to handle it.

But the fact that they are in Nevada corporations, and the Savings and Loan is a Nevada corporation, and the parent, First Western Financial, is a Delaware corporation, but doing business in Nevada. And in their positions there, I think they will respond. It will give them the opportunity if we are wrong, and I certainly don't think we are wrong and I wouldn't want to be wrong on an issue like this Webster and Brebbia problem, but I would like to give Mr. Webster and Mr. Brebbia the opportunity to explain their position, if they wish.

So if we can go somewhere in the second week in June—

THE COURT: That is impossible.

MR. SHERIDAN: Your calendar won't permit? May I inquire when is the earliest time that the Court can give us a few days?

THE COURT: Sometime in August, I guess.

MR. SHERIDAN: I wonder if we could set a date. If that is the first time the Court can hear it, that is the first time the Court can hear it. If we could set a firm date now in August, because in my responsibility as an officer of the Court, we now know that the Court has signed the findings of fact and the conclusions, the order as far as the first five. Our intention is to go to the Ninth Circuit, and in Cord versus Smith and the other cases cited, either this Court and/or the Circuit Court on these kind of motions has the power to grant a stay of proceedings until we get this issue settled. Our intention is to move as fast as we can on this first issue regarding is there a conflict among the law firm. For some reason or other everything in this case seems to get more complicated, because if the Court will recall it was Mr. Al Neumeyer who had the relationship with the attorney Norman Schlei, and Mr. Neumeyer underwent a heart operation last week and he did not survive. So Mr. Neumeyer is now dead, and I will file a formal notification in the court of his death as soon as I get a death certificate; and what effect that has, we have already done preliminary research, and I don't know if Mr. Taft is going to proceed against the Estate of Mr. Neumeyer or not; and how many of these actions survive, and does the privilege survive to the Estate. Under California law the attorney-client privilege does survive and the Estate can assert the privilege, if there is one. So far this Court says there is none on your ruling. I hope I am more successful in the Ninth Circuit.

But our intention is to go to the Ninth Circuit on that issue, and ask your Honor and/or the Ninth Circuit for a stay of proceeding in this case until that question is resolved. I was hopeful that on this Webster and Brebbia issue, if either side wanted to end up in the Ninth Circuit on it, we could put it all together. But I can see now that isn't possible, because we won't have the hearing until August.

What I am saying is—

THE COURT: I am not sure we are going to have a hearing. We are just having a discussion.

MR. SHERIDAN: What I am saying is, I am going to prepare a formal motion. I have the petition for a writ already prepared, but I didn't know until this morning that the Court had signed the order. So I will file that, and then I will ask this Court for a stay until the Ninth Circuit determines whether or not there is a conflict with the Munger firm. I am advising the Court of that in case that has any bearing on the motion pending before the Court for a protective order.

Mr. Taft's deposition schedule at this stage, I believe the first one coming up is June 4th, and it is to take the deposition of one of the twenty moving defendants, and then he has one a week later, I think, and then another one a week after that. And the first three depositions that he has scheduled are three of my clients, the moving defendants. That is the reason for the protective order.

I am wondering if there is any kind of neutral territory here that, you know, any other kind of discovery, other people that Mr. Taft is interested in who haven't made it, so that if he wants to proceed in taking the deposition—there are thirty-three named defendants in

this case. The Court has dismissed on one, on American Savings; two were dead at the time he filed his lawsuit—

THE COURT: Suppose I grant your six prayers. How does that affect the depositions that are scheduled?

MR. SHERIDAN: It would have a great deal to do with it, because the posture of this case, if these six prayers are granted, FSLIC will be restrained from using any information that came through Webster and Brebbia. The next step before I can go forward with any kind of discovery, the next step is to ascertain where they are getting their information. We know that the whole case in State Court was prepared by Mr. Brebbia, filed by Mr. Brebbia, Mr. Brebbia and Mr. Webster were attorneys of record in the State case; they removed themselves because they may have a conflict of interest. Plaintiff's case here is that case on an assignment that is up here.

Then the next area, I guess, is either motions to suppress and/or motions to dismiss.

THE COURT: When was your motion for protective order filed?

MR. SHERIDAN: April 9th, your Honor.

THE COURT: Your motion for a protective order prays to restrain any discovery until I rule on the motion for injunction, so all I have to do is rule on the motion for injunction and we don't have to worry about the motion for a protective order.

MR. SHERIDAN: When Courts raise things like to me, I sure wish I was clairvoyant so I would know how to respond. If the Court is not going to grant them, then I want the hearing so that I can subpoena Webster

and Brebbia and make my record as to why the Court should grant the preliminary injunction and the restraining order.

So if the Court is hopefully intimating that it is going to grant the restraining order, then I would be happy to remove my papers from the podium and let Mr. Taft stand up here for awhile. If the Court is indicating it is not going to grant them, as I understand the law—Mr. Taft and the Court and other people are constantly reminding me that perhaps my understanding of the law is not always correct—I am entitled to a hearing on motions for preliminary injunctions and restraining orders. If the Court is already satisfied by the affidavits it is going to grant them, then I would be happy to waive my hearing. If the Court is not satisfied by the affidavits, for instance the Rogers affidavit—

THE COURT: Let's look at it this way: Mr. Taft filed a document—I can't remember whether it related to the motion for a protective order or the motion for injunction—in which he listed a statement of facts. Do you recognize the document I am referring to?

MR. SHERIDAN: Maybe it is the recent one he just filed in the last several days.

THE COURT: In what respect do you disagree with that statement of fact?

MR. SHERIDAN: I don't disagree, I don't believe, with any of the facts that he has got there, because he has taken those facts out of my memorandum and he has credited the source. He puts at the end of it the page that he took this statement of facts—

THE COURT: Don't you submit that as a statement of facts upon which, from your point of view, Mr. Taft, you would be willing to have me decide this motion?

MR. TAFT: Yes, your Honor.

THE COURT: Then the question is to Mr. Sheridan, why do we need a hearing? What hearing? What is there about those facts that are stipulated, in effect, for the purposes of this motion, at least, that have to be supplemented or changed in order to present the case from your point of view?

MR. SHERIDAN: Well, where I would want to be as specific as I can is, for instance, how many other people, how many of my twenty defendants did Mr. Webster and Mr. Brebbia personally deal with? Were there any confidential communications?

My research into this whole area, there seems to be a split between a control group in a corporation and a non-control group, as far as corporate counsel is concerned. And this issue is on its way to the Supreme Court, apparently. It is pending there now. I don't know whether or not the Supreme Court granted cert in the Library Book case, in the antitrust case coming out of Chicago: and how far down the line in a corporation where general counsel deals with the employees of a corporation, is there an attorney-client relationship, is there confidential communication? The law seems relatively clear, at least in certain cases, that with the control group, corporate counsel properly represents both; he represents the corporation and he also is an attorney for, say, the President or Chairman of the Board or Vice-President, people in that category.

I represent, in the twenty I represent, I have got the "control" group, but I have also got people in the Paragraph 11 defendants and Paragraph 12 defendants, the way the complaint describes them. And they are down the line. These people, most of them, from my understanding, all had dealings with Mr. Webster and

Mr. Brebbia. Now, I don't know the extent of these dealings. I would have to get—

THE COURT: That statement on its face means nothing. They would have to have an attorney-client relationship. If you have dealings, isn't—

MR. SHERIDAN: That is precisely what I am going to, this attorney-client relationship. The Savings and Loan in 1965, for instance, was under investigation; IRS was there, Federal Grand Juries were inquiring. Mr. Webster handled this. The Davies firm took some of the people before a Federal Grand Jury in Washington, D. C. It involved the Savings and Loan. The complaint alleges right through that period, alleges from '61 through December of '66, there was waste and mismanagement; that the conduct fell beneath conduct—and then they cite any number of criminal statutes in this civil complaint, charging all of these defendants in a civil case with a crime. Actually the whole paragraph is headed up "Offenses committed" in the complaint in this action.

With that kind of representation going on, there is, in fact, an attorney-client relationship between corporate counsel and people in that corporation, when he takes them up, and he is dealing face to face with—

THE COURT: In the first place, I assume you would concede that each one of these persons who went to that law firm for advice knew that that law firm was representing First Western Financial and First Western Savings and Loan?

MR. SHERIDAN: Of course, I would, your Honor. But I want to put the horse before the cart.

THE COURT: Yes.

MR. SHERIDAN: Before that law firm represented First Western Financial, First Western Savings and

Loan, they represented some of my defendants in their individual capacity. They represented Bob Fielding and Al Landa in getting into First Western Financial. Mr. Neumeyer had First Western Financial. Mr. Neumeyer went to Fielding and Landa in their private capacity, wanted to raise money. Mr. Fielding and Mr. Landa put the money in. They arranged for the money, $750,000 loans and things of this nature, as set forth in the Rogers affidavit. In handling that transaction, gets Fielding and Landa involved in First Western. Mr. Webster handled that. That is part of the complaint here. It is charged here that this is part of the conspiracy to get this group to go on in and do this sort of thing.

So that the Davies firm first represented the individuals, then represented the corporations, yes; but I don't know how we separate those. And who is the burden on—

THE COURT: The way you separate them is to come to the conclusion that someone, who is presumably competent, goes and makes confidential or so-called confidential disclosures to somebody whom he knows represents the opposition, the disclosure isn't confidential.

MR. SHERIDAN: But the burden is on the lawyer, not on the prospective client. I can represent a corporation and the people in the corporation, of course, deal—I may be dealing with a President, Vice-President, Executive Vice-President, Chairman of the Board. I deal with those people face-to-face. They, of course, know I represent the corporation. If they come to me and the President of this corporation wants to tell me that he just embezzled some money from the corporation, it is a very complicated relationship between an attorney and client at that stage—

THE COURT: You were just reading my mind. I was thinking of the same example. Now, when the President comes and says, "Here, you represent the company and the Board of Directors and here is my problem: I borrowed $200,000 because I thought I had a hot tip on the market and now I can't pay it back. What do you recommend?"

MR. SHERIDAN: That is precisely the kind of problem. Corporate counsel and the corporate lawyers in their section discussion this problem frequently. As to who the burden is on, it is on the lawyer. If the lawyer lets that man talk to him and then he takes a position against the corporation, it is still more the lawyer's fault than the client. I am sure that there are clients that are smarter than lawyers, and maybe he can bind the lawyer, et cetera, et cetera, by that kind of a communication so that he can immunize that lawyer from taking any action against him, perhaps. And any mind that takes $200,000 on a hot tip on the market might be that subtle, that it would think of such a thing. But even if that took place, it may well be that that lawyer, once he lets that man talk to him and divulge to him, "Mr. Lawyer, I embezzled $200,000." The lawyer lets him go that far, I think there is an attorney-client relationship established there at that time, and that is obviously a confidential communication. I know it is a thorny problem, but it is going to have to be resolved against the legal profession, not in favor of the legal profession, but against the legal profession. If the lawyers want to keep the privilege, confidential communications that can't be divulged, then they are going to have to protect that relationship. In California we just knocked out the California Evidence Code, a psychiatrist's privilege. That is now gone. It

only takes an act of the Legislature to throw out the attorney-client privilege. It should not, in my opinion, ever be thrown out; but it has got to be protected by the lawyers. And I think part of the answer has to be that the lawyer has to say, "Wait a minute, Fred. You know I am corporate counsel. My interest and duty is to the corporation. Anything you tell me I am going to have to tell the corporation, so don't tell me something that is against the corporation.

THE COURT: That all sounds just great, except that is not the way people operate. Suppose Fred is the President of the company and they are good friends and they are having lunch together and his conscience is bothering him, and just all of a sudden he blurts something out. He didn't have a chance to warn him of anything.

MR. SHERIDAN: That lawyer has a very tough, difficult decision at that time. And under the facts that you gave, I think the lawyer would have to be—maybe he can settle it, because within that kind of a relationship it may be that he is going to have to tell Fred, "Fred, look, don't put me in the bind. Call a meeting of the Board and make your disclosure to the Board and see if we can get this whole thing straightened out."

And within that kind of a relationship maybe it is solved.

Why do so many corporations have outside counsel? I think it is for this very reason. In dealing with general counsel for corporations, my own personal dealings with general counsel for major corporations in the United States is always a touchy one. A Grand Jury puts a subpoena in an antitrust case out and general counsel, his position in that company is strictly walking

on eggshells, because he is a lawyer. Yet he is part of the management of the company in his position of general counsel, and usually he is at least an assistant secretary or something so that he can execute documents. And it is very difficult for that man, and he has very severe conscience problems on handling these things. He likes nothing better than to get outside counsel and let him worry about it and protect general counsel at the same time. So I don't think it is something that you can just draw a simple little line and say that is it. A lot of it is going to have to go on a case-by-case, fact-by-fact development in order to decide these things.

THE COURT: I will listen to what Mr. Taft has to say.

As I understand it, what we are discussing is generally the motion for a protective order; secondly, the need and desirability of having an evidentiary hearing on these six additional prayers for injunctive relief.

MR. TAFT: Yes, your Honor. I would almost like a hearing, because it appears that is the only way I will get to interrogate any of his defendants. But I have mixed feelings when I oppose it.

However, I do not find as much difficulty as Mr. Sheridan does. First of all, the problem he discussed at the last point is treated fully by the case on which he relies, the Hutton case, in which the Court treated that particular problem where a corporate employee comes to corporate counsel and gives information which eventually gives rise to a lawsuit by the corporation against the employee. The Court held the only thing that the corporate counsel could not do would actually be the counsel to prosecute the suit on behalf

of the corporation. As far as the privilege is concerned, the Court held that there was none; not only because there is a joint client and joint subject matter —in this case there is no privilege between the two clients, only against third parties and the outside world—but also it held that when a corporate employee comes into information in his capacity as a corporate employee, the corporation already knows. It is the sum total of what all the corporate employees know and learn through their corporate activities. As such, the corporation already has the knowledge before the attorney is informed; and when the attorney is informed, he also is a corporate officer, so that in a sense the corporation is being informed again. So that the Court was very clear in Hutton; that there is no privilege between the corporate employee and the corporation. And that I think disposes of a great deal of the problem that Mr. Sheridan raises.

What the Hutton case dealt with was whether or not the counsel involved could actually sue the former employee. And that is exactly the kind of relief which he has sought in his motion against Webster and Brebbia. Yet he has never shown that they are representing the plaintiff in this case, or representing them directly in any way. The only way in which they come into it is either currently insofar as we deal with the corporation or insofar as we receive files or information as to what happened in the past.

THE COURT: I have forgotten something. Historically, when Webster and Brebbia became officers and directors of the Savings and Loan Association, it was with the approval of the FSLIC, wasn't it?

MR. TAFT: Yes, your Honor. I am not sure that they are on the Board of the Association. I would

have to check. I don't think so. But I can't—I know that they are—

THE COURT: How did they acquire their executive positions with First Western Financial Corporation?

MR. TAFT: With the holding company? Well, that is in dispute, among other things, between us. It is one of the issues they are making a part of their motion, in the sense it is viewed as a motion to suppress or taint the whole case. They claim that Webster and Brebbia talked everybody else into resigning and then got elected themselves.

THE COURT: But if they don't have stock control, they couldn't maintain that position.

MR. TAFT: That would be my view, although I don't know that much about the management situation of the Financial Corporation. It is a very widely-held company, and I believe the largest single holder is the now Estate of Mr. Neumeyer.

MR. SHERIDAN: I can advise the Court on that, because I did attend the annual meeting of First Western. It was held in Los Angeles. In fact, I had two or three hundred thousand proxies to vote at it, which was nowhere near enough to do anything. Neither Mr. Webster nor Brebbia have significant stock holdings. They have stock options in the parent, but the shares they personally hold are strictly minimum. Mr. Webster because general counsel of the parent in December of 1966. He was elected to the Board in August of 1966. He brought Mr. Brebbia onto the Board in December 5, 1966. FSLIC, in his complaint that is before this Court, has stated in the complaint that they, FSLIC, brought in a new Board of Directors in December of 1966. And in the complaint they specifically say they

approve of the Board of Directors of First Western Financial as it is constituted. They further—

THE COURT: You mean First Western Financial, not First Western Savings and Loan.

MR. SHERIDAN: It is an alter ego, it is a wholly-owned subsidiary, I understand, but the assistance agreement wasn't with First Western Financial.

MR. SHERIDAN: First Western signed it also, your Honor. The financial company signed it also, your Honor.

THE COURT: All right.

MR. SHERIDAN: Insofar as it is over the Association, they control, FSLIC controls the Board of the Savings and Loan. They stated in their complaint the Savings and Loan agreed to submit to this control when it signed the assistance agreement with FSLIC on December 19, 1966.

MR. TAFT: May it please the Court, I think if I might go back to the only theory that I can see on behalf of Mr. Sheridan, if we take the situation that he proposed of a corporate president coming to corporate counsel and saying, "I stole $200,000, I can't pay it back." And at that point the corporate counsel goes to the corporation and informs the corporation, the corporation brings suits against the president. Mr. Sheridan is saying that if there is a privilege between the president and the corporation so the lawyer can't tell the corporation, then the only source of the information as to the theft was through the attorney to the corporation, and therefore the whole case is tainted and the corporation can't sue the president for embezzlement. This would be a very nice circle, if the law were available for that kind of circuity in this

situation. And I don't think it is. I think Hutton makes it absolutely clear that that could never be the case.

I think what we do have, and the only thing we have, is an evidentiary problem of who should assert a privilege when they are being deposed and what it would cover. I do not want to try and hide this or get around it in any way. I have, I believe it is thirteen correspondence files, which Mr. Webster, I gather, took from the firm when he left, the Davies firm. These thirteen files are correspondence files of the Association and of the Financial Corporation, according to the labels on the front of them. I am perfectly willing to make these available to Mr. Sheridan, so that at any time on deposition he will be able to assert a privilege through his client, if he wishes.

Now, they, of course, always have the problem of deciding, "Well, is what I am about to testify to something which I learned as an attorney and therefore can't testify to?" They can pass on that as the questions come up, and then that issue can be presented to the Court for litigation, if necessary.

Mr. Landa testified in the State case. He testified in the State case on deposition at a time when Mr. Webster and Mr. Brebbia insisted that he not reveal confidential communications learned from the Financial Corporation. They wrote to him as corporate officers and said, "On deposition, you shall not reveal you learned as an attorney from the Financial Corporation." Even though—well, he was not being sued in that case. And Mr. Landa was able to testify, and did so for two days, and was able in his own mind to decide what he should answer, what he should not and what he had learned as a corporate officer and what he may have learned as a member of the law firm.

So I think that is the manner in which the problem should come up and should be solved. And as I say, I am willing to turn over all the files which I have received which came from the Davies law firm and which I have, so that there will not be a case where I can slip something by, perhaps. I think that this should solve the problem on discovery.

As to the broader issue of whether or not there is a taint to the whole case, I would agree with the Court that this is something that could only be decided after really not only the merits of the case, but this Webster-Brebbia area is fully uncovered on discovery.

For instance, we are asserting here a corporate cause of action. It is not Mr. Webster's or Mr. Brebbia's, and the corporation has an interest here as well. Webster and Brebbia are in control of the Financial Holding Company, but, as Mr. Sheridan states, their stock holdings are minimal. Perhaps the parent isn't worth anything without control over the Association, which is agreed in the hands of FSLIC; but just because it is not worth much at this time does not mean that the corporation is not an entity which has rights which in turn also have to be protected.

So I would also agree that insofar as any taint issue is raised, and I don't think that they are raised by the current motion on Webster and Brebbia which only goes towards them, that can be solved at a future time if and when there is any authority or evidence to support it.

THE COURT: We will be in recess for ten minutes.

(Short recess.)

THE COURT: Yes, sir, Mr. Sheridan.

MR. SHERIDAN: Your Honor, I just want to make several observations.

Mr. Taft made the statement that when a corporate employee knows something, the corporation automatically knows it. In one area of law that is obviously true, but in many areas of law, of course, it is not true. Look at all the litigation for instance on insiders, and the President has the duty to disclose to the corporation when he has an opportunity, a corporate opportunity, before he could take the opportunity he must disclose it. Of course, if he knew of it and the corporation knew of it, there would never be a duty to disclose; and obviously there is a duty to disclose things to the corporation.

The second point, Mr. Taft mentioned the Hutton case. The Hutton case is a very, very interesting case. But Mr. Taft concluded from it one statement; that the one thing that the Court in the Hutton case said that corporate counsel couldn't do was to prosecute the actual case. Now, isn't that exactly what we have here? They are in this case on an assignment of that State action. The State action was prosecuted by Webster and Brebbia; prepared the pleadings, Brebbia signed the pleadings—

THE COURT: This is not the State action.

MR. SHERIDAN: But it is by assignment. That very cause of action, which you have ruled is a valid assignment, FSLIC doesn't have any right on its own—

THE COURT: You said "State action." I guess you meant the same cause of action that was alleged in the State action.

MR. SHERIDAN: That is correct. It is the same cause of action. They came in, took—Mr. Taft has

disclosed they have received or have in their possession thirteen files that they think came from Mr. Webster, and they think these may be the files that Mr. Webster stole from the Davies law firm. But they have got the whole lawsuit that they took the assignment of to come into this Court, came from Webster and Brebbia. So the very thing that he is saying, his interpretation of the Hutton holding, that corporate counsel couldn't prosecute the case, well, that is the position they are in; corporate counsel did prosecute the case, then assigned it to FSLIC, and FSLIC is now just continuing that prosecution. Well, they filed a new complaint, but it is based—without the assignment, FSLIC can't be in this Court as a plaintiff asserting a corporate cause of action.

I frankly don't know how they can assert the SEC cause of action. If the SEC wanted to bring the suit, let them bring something. They are in other people's shoes all the way down the line. They are asserting corporate causes of action. As a governmental agency, they don't have that power. They are doing it by assignment, but that assignment is Webster and Brebbia.

I don't know how to respond to Mr. Taft's offer of he will make these thirteen files available to me.

THE COURT: That is too quick and easy. I think you want to take a long time and file a motion demanding the production of them.

MR. SHERIDAN: Mr. Taft is keeping me busy with his motion for production of documents, and going back to 1952, he wants documents in this case. His complaint says from '61 to '66, but he wants documents from '52, which we will have some problems with, I take it. So I always accept opposing counsel's offer to give me anything or show me anything, so I know

that I am going to take him up to look at these thirteen files. I will have to have other people from the Davies firm examine those files, because frankly I don't think those files are "corporate files." I know in my own law practice I have things in the file that do not belong to the client. It may be communications between me and an associate, between me and another law partner, it can be some of my personal observations, my own memos, by own research, my own work products that belong to me, do not belong to my clients. And the best I can tell at this stage, all of that is in these files, this kind of material.

I know specifically, I have been advised specifically, coming off the appendix, that several of the documents that Mr. Taft has asked for production of, he has got the only copy of. But he has asked us to produce them and they are interoffice memoranda between two law partners. Others are personal files of Mr. Landa. So I don't know—I want to see the thirteen files, and then I am advising Mr. Taft through the Court that finally I would like to work out an arrangement so I could see them. And if that in any way can expedite, assist the Court in the rulings that the Court is now faced with, fine. I don't think we have to wait until the case is over to discover if there is a taint.

Cord versus Smith in the Ninth Circuit, and the second Cord versus Smith case in the Ninth Circuit, which bears on the very thing we are talking about, there is an allegation there that there was a conflict against the attorney. The Trial Court found no conflict. It went to the Ninth Circuit, actually on an appeal, and the Ninth Circuit said it was not appealable, but they would handle it on a petition for writ of mandamus. They granted the petition for writ of man-

damus and sent the case back to the Trial Court and ordered that particular Trial Court to give it to another judge. The Ninth Circuit was upset with Judge Thurmond Clarke in that case and took it away from Judge Clarke and gave it to another one, and ordered the District Court to get that lawyer out of the case.

What happened, there is another Cord verus Smith case that goes up to the Circuit the following year. The lawyer got out of the case as counsel. Then the client he was representing, he took a piece of the action, he took an assignment. And he comes in filing his own lawsuit as an assignee. It went up to the Ninth Circuit and the Ninth Circuit ordered the case dismissed, wouldn't even allow them in on that basis.

Here we have the same kind of an assignment, so it is assigned over to FSLIC. It is Webster and Brebbia again that we are still dealing with.

I feel I am spending too much time on the Webster-Brebbia thing at this stage, and I know Mr. Taft hasn't filed his opposition yet, his points and authorities anyway, on that particular point. I don't see any harm in granting the motion for protective order at this stage. He has three depositions scheduled somewhere in June. Other defendants haven't doined in this. There are other defendants whose depositions he can take or non-defendants even, if he wants to go that way, independent witnesses. I am just talking about a protective order for my twenty defendants. If the Court grants that until we have the hearing on Wesbter and Brebbia, I am going to try to go the Ninth Circuit—well, I am going to the Ninth Circuit, not trying to, because that I can do as a matter of right on this first conflict question. There is enough for Mr. Taft to do in this period, there is enough for me to do in this period;

and I think it is an accelerated appeal in the Ninth Circuit on this first issue. So he can move forward on his case with other defendants, if he wishes, that I do not represent, who have other counsel and so on. We will be handling this thing on the appeal. So I think the Court should grant the motion for protective order, put a time limit on it, perhaps. Because I will be back probably next week, whenever the Court can hear me on the motion for stay, once I file the appropriate papers to go to the Ninth Circuit.

MR. TAFT: May it please the Court, might I just say that I think we get to the truth of the matter in his last statement; namely, he wants to protect his twenty defendants. I can use whatever I may have gotten from Webster and Brebbia, tainted or anything else, I can use that against anybody, any other defendant, any third party witness, "but not my twenty defendants." I think that is all he is concerned with. If his legal position were one truly of taint, he wouldn't want the case to proceed at all.

THE COURT: That would be a suitable disposition.

MR. SHERIDAN: I consider that unfair. I have enough trouble representing my twenty without trying to represent people who haven't hired me and who certainly won't pay me.

MR. TAFT: In Hutton, the case is not terminated. The firm was just told it could not handle the case. It said the firm could turn over the case to new counsel and could familiarize new counsel with the case. It did not taint anything that happened up to that point. No case, so far as I know, where attorneys have been enjoined from representing the plaintiff in the case, no case has gone back and undone things that were done up to that point.

This whole idea that Webster and Brebbia may have been involved in the same case, that is irrelevant under Hutton, which is the case on which he relies. Again, it is the corporation that has acted in every single case. Cord v. Smith is not relevant, because in fact they have done the opposite in Cord v. Smith. Cord v. Smith, the attorneys involved were criticized for taking an assignment. Here, if you don't want to consider the corporation as acting and go behind it and say Webster and Brebbia are acting, what they did was they assigned not only the case, but they assigned control of the case to another party so that they would not have anything to do, not only with the bringing of the case but whether or not it would even be brought. Because under the assignment FSLIC got the control of whether they wanted to proceed with the cause of action or not. The corporation had no say whatsoever on how we were to proceed, whether we were to proceed or what have you. As a result, I think that if they had done anything wrong in the past—

THE COURT: They finally did something right.

MR. TAFT: They assigned it to FSLIC. I think the protective order ought to be denied; and if the Court felt it could rule on the Webster-Brebbia motion at this time, I would not insist on filing my opposition to it.

* * *

Page 46, line 21:

THE COURT: April 29th. I have it here, I think. The hearing on the plaintiff's motion for the establishment of document depositories and selection of liaison counsel for all defendants will be held on Friday, June 5th, at 1:30 o'clock.

The clerk is directed to send a notice to all parties which will call attention to the two types of relief that are sought by that motion.

On that same date the Court will entertain the twenty defendants' anticipated motion for a stay pending application to the Court of Appeals for the Ninth Circuit.

I think there is some virtue involved in going to the Ninth Circuit as little as possible, so I am going to set this up so you can go on both motions at the same time. So the motion of twenty defendants for protective order, which seeks a stay of all discovery proceedings until termination of the motion for injunctions, is denied.

I will also prepare an order denying the motion for the injunctive relief sought with respect to the participation of Webster and Brebbia in the case, which will also deny any need at the present time for any evidentiary hearing in support of that motion; and will then indicate the possibility that the Court, after discovery is completed or near completion, will entertain a motion that the action be dismissed if the defendant is advised that that would be a proper motion at that time.

I think that there are a lot of uncompleted matters, but is there anything we can take up now?

MR. SHERIDAN: I don't beieve so. I think at this stage Mr. Taft has a motion pending for production of records under Rule 34. My time has probably run out, and I will be filing an opposition.

THE COURT: Do you want a minute order extending your time on anything to protect yourself? How much time do you need on that motion to produce?

MR. SHERIDAN: Mr. Taft and I don't have that kind of a problem.

THE COURT: All right. I do want the record to show that I am not denying your motion for injunctive relief on the ground that you didn't get your brief in in time.

MR. SHERIDAN: No. Mine is in. I got the brief in and you ruled against me; he didn't file any brief and you ruled for him. So there has got to be a moral there.

I don't have anything further then at this time, your Honor.

THE COURT: All right. We will be in recess until 1:30.

APPENDIX B.

Judgment.

United States District Court, Central District of California.

United States of America, Plaintiff, vs. Joseph Y. Stein and Leonard B. Stallman, Defendants. No. 2523. Filed, May 21, 1969.

On this 21st day of May, 1969 it is adjudged as follows:

1. Defendants' motion to suppress information obtained from the Government's illegal electronic surveillance and the "fruits" derived therefrom is granted.

2. Defendants' motion to dismiss the indictment is granted and the Court enters a judgment in bar of the Government proceeding further in this matter in order that the Government may appeal to an appropriate court if it so desires.

Dated: May 21, 1969.

/s/ Warren J. Ferguson
Warren J. Ferguson
United States District Judge

I hereby attest and certify on Dec. 18, 1970 that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody. Clerk U.S. District Court. Central District of California. By M. Ware, Deputy.

[Seal]